

FILED

JAN 22 2018

CLERK, U.S. DISTRICT CLERK
WESTERN DISTRICT OF TEXAS
BY DEPUTY

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

UNITED STATES OF AMERICA,
Plaintiff,

v.

\$27,850.00, MORE OR LESS,
IN U.S. CURRENCY,
Defendant.

A18CV0056 RP
CIVIL NO.

VERIFIED COMPLAINT FOR FORFEITURE

NOW COMES Plaintiff United States of America, by and through the United States Attorney for the Western District of Texas, pursuant to Rule G, Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions, Federal Rules of Civil Procedure, and respectfully states as follows:

I. NATURE OF THE ACTION

1. This action is brought by the United States seeking forfeiture to the United States of the following property: **\$27,850.00, More or Less, in U.S. Currency (hereinafter "Defendant Property")**.

II. STATUTORY BASIS FOR FORFEITURE

2. This is a civil forfeiture action *in rem* brought against the Defendant Property for violation of the Controlled Substances Act (21 U.S.C. §§ 801 *et seq.*) and subject to forfeiture to the United States pursuant to 21 U.S.C. § 881(a)(6), which states:

§ 881. Forfeitures

(a) Subject property

The following shall be subject to forfeiture to the United States and no property right shall exist in them:

...

(6) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance or listed chemical in violation of this subchapter, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this subchapter.

III. JURISDICTION AND VENUE

3. Under 28 U.S.C. § 1345, the Court has jurisdiction over an action commenced by the United States, and under 28 U.S.C. § 1355(a), the Court has jurisdiction over an action for forfeiture. This Court has *in rem* jurisdiction over the Defendant Property under 28 U.S.C. §§ 1355(b) and 1395.

4. Venue is proper in this district pursuant to 28 U.S.C. § 1355(b)(1), because the acts or omissions giving rise to the forfeiture occurred in this District and because the Defendant Property is found in this District. *See also* 28 U.S.C. § 1395(b).

5. The Defendant Property was seized in Austin, Texas on August 13, 2017, by the Austin Police Department (APD) and adopted by Drug Enforcement Administration (DEA). The Defendant Property has remained in the custody of the DEA, within the jurisdiction of the United States District Court, Western District of Texas, and shall remain within the jurisdiction of the court pending litigation of this case.

IV. FACTS IN SUPPORT OF FORFEITURE

6. Around 5 p.m. on Sunday, August 13, 2017, a Transportation Security Administration (TSA) employee – working an x-ray screening area at the Austin Bergstrom International Airport (ABIA) – noticed a large amount of currency in a carry-on bag belonging to a 23-year-old male, who was later identified as Kevin James Escue (Escue).

7. The TSA employee requested a secondary bag check. Escue was escorted to a secondary screening area. A TSA screener determined that Escue was carrying about \$20,000 in

cash in his carry-on bag and about \$5,000 in his pocket, which was wrapped with rubber bands. A TSA supervisor was alerted to the situation, and the APD was called.

8. Officers Hudson and Rodriguez arrived on scene and took over the investigation. Escue was asked about how much money he was carrying; he stated \$25,000. Escue was asked about his destination; he replied San Francisco.

9. Based on training and experience, law enforcement personnel know that San Francisco is considered a "source city" for the smuggling of high-grade marijuana to the Austin area. Because of the high profit margin, law enforcement personnel know that it is common place for subjects to fly from the Austin area with large sums of currency to the West Coast area, including San Francisco, to purchase marijuana so that the marijuana may be brought back to the Austin area for distribution. The subjects carrying the large sums of currency, often purchase one-way airline tickets within a day or less of their flight. In addition, the subjects cannot explain their travel plans, *e.g.*, purpose for travel, hotel reservations, means of transportation at destination site, and/or provide verification of how or where the currency was obtained.

10. As the conversation progressed, Escue was asked why he was traveling with so much cash. Escue stated that he was on his way to purchase a Peterbuilt semi-truck, which he located on Craigslist, for his grandfather. When pressed about not using a bank to avoid traveling with so much cash, Escue replied that he did not have a bank account. Escue also explained that his grandfather, Billy Post (Post), owned a trucking company out of Houston: AASAP Transport, Inc.

11. Escue invited the APD officers to call Post to verify his story. Officer Rodriguez called the number provided by Escue and spoke with a male who identified himself as Post. Post stated that Escue works for his company (AASAP Transport, Inc.) and travels for the business.

Post, however, could not corroborate Escue's travel to San Francisco (instead, thinking Escue was headed to Houston), and Post was unaware of Escue's possession of a large amount of cash. Post explained that he was unaware about the money (a) because his wife and sons run the company and (b) because Escue has access to Post's bank account. While on the phone with the officer, Post asked his wife about Escue, but she was also unaware of where Escue was headed or why he possessed a large amount of cash.

12. While Officer Rodriguez spoke with Post, Officer Hudson asked Escue about his flight. Escue's flight was scheduled to depart at 5:44 p.m., *i.e.*, in approximately seven minutes. The officer noted that Escue was a late arrival to the airport and knew that arriving late to the airport is a common tactic used by narcotics traffickers in an attempt to speed through the check-in process and reduce the amount of time exposed to law enforcement. Escue also confirmed that the address on his driver's license was his home address (in Pinehurst, Texas). Escue was asked why he didn't simply fly out of Houston (which was closer than Austin¹); Escue replied that there were no direct flights from Houston to San Francisco, and because Austin did have direct flights to San Francisco, he chose to fly out of Austin. Escue's reply contrasted with the officers' knowledge that there were at least twelve direct flights from Houston to San Francisco on that day.

13. The officers next tried to confirm Escue's story about traveling to purchase a semi-truck. But Escue could not provide any documentation or further information about the truck. For example, he did not know who he was buying the truck from and where he was going to meet to see the truck, and he could not show the officers the information on Craigslist as he

¹ Pinehurst, Texas is about 40 miles from the George Bush Intercontinental Airport in North Houston and about 50 miles from the William P. Hobby Airport in Southeast Houston while the ABIA is 133 miles from Pinehurst, Texas.

previously stated. Escue was asked again about who was sending him to buy the truck since his grandfather did not know anything about it. At this point, Escue changed his story, now asserting that his uncle was sending him for the truck. When asked who had provided the money, Escue would not identify a person, instead answering “my family” several times.

14. Escue was advised that he was not under arrest and was free to leave without the money, which remained under investigation. Escue was asked for any receipt that might document how or where the currency was obtained, but Escue could not provide any such documentation. Escue chose to depart, leaving the money with the officers. Although Escue departed the checkpoint, the officers observed that he did not proceed to the gate for his flight that was leaving within minutes.

15. An APD officer and his certified drug dog were called to the scene. The drug dog is a trained and experienced narcotics detection dog that is annually certified in detecting the odors of cocaine, ecstasy, heroin, marijuana, methamphetamine, and some of their derivatives. The officer deployed the drug dog in accordance with his training, the drug dog alerted to the bag containing the currency.

16. The money was then placed in an evidence bag and secured in a safe at the APD’s office at the airport. On August 14, 2017, the evidence bag was taken to the APD offices where it was counted. The Defendant Property consisted of the following:

Denomination	Number	Value
\$100	250	\$25,000
\$50	57	\$2,850
	Total	\$27,850

17. In continuing the investigation, an APD officer telephoned Escue on August 15 and August 16, 2017. Escue did not answer either call. Voice messages were left, but Escue did not return the calls.

18. A review of Escue's criminal history shows a 2013 arrest for Possession of Marijuana and a 2014 arrest for Possession of Marijuana. Additionally, a records check failed to show any reported earnings for Escue.

19. On September 25, 2017, the DEA provided Escue; Post; and AASAP Transport, Inc. with notice of the seizure of the Defendant Property and of its intention to administratively forfeit the Defendant Property pursuant to the Controlled Substances Act. On October 27, 2017, Escue submitted an administrative claim to the DEA, contesting the forfeiture of the Defendant Property. On October 27, 2017, Post submitted an administrative claim to the DEA for \$9,500 of the Defendant Property, averring it was money loaned to Escue.

20. Based on the foregoing facts, it is reasonable to believe that the Defendant Property is subject to forfeiture given: (1) the large amount of cash seized; (2) the positive dog alert on the Defendant Property; (3) Escue's inability to provide any information related to his intended vehicle purchase; (4) his destination to a known source city for drug trafficking, (5) the officers' inability to corroborate any part of Escue's story, (6) Escue's prior arrest history; and (5) Escue's lack of earnings to explain the accumulated cash. In other words, it is reasonable to believe that the Defendant Property constitutes property involved in or intended to facilitate a transaction related to the buying and selling of narcotics and/or constitutes or is derived from proceeds of drug transactions. Therefore, the Defendant Property is subject to forfeiture pursuant to 21 U.S.C. § 881(a)(6) for the violation of 21 U.S.C. §§ 801 *et seq.*

V. PRAYER

WHEREFORE, PREMISES CONSIDERED, the United States prays that due process issue to enforce the forfeiture of the Defendant Property, that due notice, pursuant to Rule G(4), be given to all interested parties to appear and show cause why forfeiture should not be decreed,² that a warrant for an arrest in rem be ordered, that the Defendant Property be forfeited to the United States of America, that the Defendant Property be disposed of in accordance with the law, and for any such further relief as this Honorable Court deems just and proper.

Respectfully submitted,

JOHN F. BASH
UNITED STATES ATTORNEY

By:



DANIEL M. CASTILLO
Assistant United States Attorney
Texas State Bar No. 00793481
816 Congress Avenue, Suite 1000
Austin, Texas 78701
Tel: (512) 916-5858
Fax: (512) 916-5854
Email: Daniel.Castillo@usdoj.gov

ATTORNEYS FOR PLAINTIFF,
UNITED STATES OF AMERICA

²Appendix A, Notice of Complaint of Forfeiture, which is being filed along with this complaint, will be sent to those known to the United States to have an interest in the Defendant Property.

VERIFICATION


I, Jeff Brennecke, declare and state as follows:

1. I am a Task Force Officer with the Drug Enforcement Administration assigned to the Austin Resident Office. I am the investigator responsible for the accuracy of the information provided in this litigation.

2. I have read the above Verified Complaint for Forfeiture and know the contents thereof. The information contained in the Verified Complaint for Forfeiture has been furnished by official government sources, and based upon information and belief, the allegations contained in the Verified Complaint for Forfeiture are true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 22nd day of January, 2018.



JEFF BRENNECKE, Task Force Officer
Drug Enforcement Administration
Austin Resident Office

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

v.

\$27,850.00, MORE OR LESS,
IN U.S. CURRENCY,

Defendant.

A18CV0056 RP

CIVIL ACTION NO.

NOTICE OF COMPLAINT FOR FORFEITURE

1. On January 22, 2018, a Verified Complaint for Forfeiture *in rem* was filed in this Court by the United States Attorney for the Western District of Texas, against the below-described property, which is also specifically described in the Verified Complaint for Forfeiture, for violation of 21 U.S.C. §§ 801 et seq., and subject to forfeiture to the United States of America pursuant to 21 U.S.C. § 881(a)(6), namely:

\$27,850.00, More or Less, in U.S. Currency

(hereinafter "Defendant Property").

2. Pursuant to Rule G(4)(b) of the Supplemental Rules for Admiralty or Maritime Claim and Asset Forfeiture Actions (hereinafter "Supplemental Rules"), notice to any person who reasonably appears to be a potential claimant shall be by direct notice. Accompanying this notice is the Verified Complaint for Forfeiture which has been filed in this cause and which describes the Defendant Property. Pursuant to Supplemental Rule G(4)(b), any person claiming an interest in the Defendant Property who has received direct notice of this forfeiture action must file a Claim, in compliance with Rule G(5)(a), with the court **within 35 days after the notice was sent, if delivered by mail, or within 35 days of the date of delivery, if notice was**

personally served. An Answer or motion under Rule 12 of the Federal Rules of Civil Procedure must then be filed within **21 days** of the Claim being filed.

3. The Claim and Answer must be filed with the Clerk of the Court, 501 W. Fifth Street, Austin, Texas 78701, and copies of each must be served upon Assistant United States Attorney Daniel M. Castillo, 816 Congress Avenue, Suite 1000, Austin, Texas 78701, or default and forfeiture will be ordered. *See* 18 U.S.C. § 983(a)(4)(A) and Rule G(5) of the Supplemental Rules for Admiralty or Maritime Claim and Asset Forfeiture Actions.

4. Failure to follow the requirements set forth above will result in a judgment by default taken against you for the relief demanded in the complaint.

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

United States of America

DEFENDANTS

\$27,850.00, More or Less, in U.S. Currency

A18CV0056RP

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Travis County
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

United States Attorney's Office

Daniel M. Castillo, AUSA

816 Congress Ave., Suite 1000, Austin, TX 78701, (512) 916-5858

Attorneys (If Known)

Rick Flores, Minton, Burton, Bassett & Collins, 1100 Guadalupe St., Austin, TX 78701

(512) 476-4873

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input checked="" type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

21 U.S.C. Sec. 801 et seq

Brief description of cause:

Drug Proceeds

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

01/22/2018

SIGNATURE OF ATTORNEY OF RECORD

Daniel M. Castillo

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

Pitman

MAG. JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

A18CV0056RP

UNITED STATES OF AMERICA,
Plaintiff,

v.

\$27,850.00, MORE OR LESS,
IN U.S. CURRENCY,
Defendant.

CIVIL ACTION NO.

WARRANT FOR THE ARREST OF PROPERTY

TO THE UNITED STATES MARSHALS SERVICE OR OTHER AUTHORIZED LAW ENFORCEMENT OFFICER OR ANY OTHER PERSON OR ORGANIZATION AUTHORIZED BY LAW TO ENFORCE THE WARRANT:

WHEREAS a Verified Complaint for Forfeiture *in rem* was filed on January 22, 2018, against the following Property:

\$27,850.00, More or Less, in U.S. Currency

(hereinafter "Defendant Property"), alleging that the Defendant Property is subject to forfeiture to the United States of America pursuant to 21 U.S.C. § 881(a)(6) for violation of 21 U.S.C. §§ 801 et seq., and

WHEREAS an Order has been entered by the United States District Court for the Western District of Texas that a Warrant for the Arrest of Defendant Property be issued as prayed for by Plaintiff United States of America,

YOU ARE THEREFORE COMMANDED to arrest the Defendant Property as soon as practicable by serving a copy of this warrant on the custodian in whose possession, custody, or control the Defendant Property is presently found and to use whatever means may be appropriate to protect and maintain the Defendant Property in your custody until further order of this Court,

including designating a substitute custodian or representative for the purposes of maintaining the care and custody of the Defendant Property and to make a return as provided by law.

SIGNED this _____ day of _____, 2018.

JEANNETTE J. CLACK
United States District Clerk
Western District of Texas

By: _____
Deputy

ORDERED that a Warrant for the Arrest of Defendant Property issue as prayed for, and that the United States Marshals Service for the Western District of Texas, or any other law enforcement officer, or any other person or organization authorized by law to enforce the warrant, be commanded to arrest the Defendant Property and take it into possession for safe custody as provided by Rule G, Supplemental Rules of Federal Rules of Civil Procedure until further order of the Court, and to use whatever means may be appropriate to protect and maintain the Defendant Property while in custody, including designating a substitute custodian or representative for the purposes of maintaining the care and custody of the Defendant Property and to make a return as provided by law.

SIGNED this _____ day of _____, 2018.

UNITED STATES DISTRICT JUDGE